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MAIER & MAIER, PLLC 1000 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER TO, TUAN C	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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4 UNITED STATES PATENT AND TRADEMARK OFFICE  
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7 BEFORE THE BOARD OF PATENT APPEALS  
8 AND INTERFERENCES  
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11 *Ex parte* ANGELA MASSON  
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14 Appeal 2008-5592  
15 Application 09/699,963  
16 Technology Center 3600  
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19 Decided:<sup>1</sup> March 9, 2009  
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22 *Before:* WILLIAM F. PATE, III, JENNIFER D. BAHR, and  
23 FRED A. SILVERBERG, *Administrative Patent Judges*.  
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25 SILVERBERG, *Administrative Patent Judge*.  
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28 DECISION ON APPEAL  
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31 STATEMENT OF THE CASE

32 Appellant appeals under 35 U.S.C. § 134 (2002) from a Final  
Rejection of claims 68-73. Claims 20-47 and 60 have been withdrawn. No

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<sup>1</sup> The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

other claims are pending. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF DECISION

We AFFIRM.

## THE INVENTION

The Appellant's claimed invention is directed to a portable, computerized, electronic kit bag for aviation professionals including a portable computer having a central operating program for organizing the contents of a standard pilot kit bag (Spec.: paras. [0003], [0017] and [0018]). Claim 68, reproduced below, is representative of the subject matter on appeal.

68. A method of providing to and for use by an aircraft aviation professional or pilot a lightweight and easily manipulated electronic flight bag, comprising the steps of:

(a) providing a transportable laptop computer to be carried by said aviation professional to and from and within an aircraft and airport, in a carry bag;

(b) programming said laptop with linear and non-linear algorithms and operating programs capable of: processing flight information, manipulating flight related data in a non-linear algorithm thereby aiding in flight decision-making processes resulting in solutions to flight related mathematical computations and runway selections and aircraft operating parameters and procedures, calculating pilot fatigue limits and scheduling issues and fuel computations, providing data displays to said professionals; and

(c) loading aircraft and flight related data into the said laptop and pertaining to a flight plan, weather information for said flight plan, aircraft crew scheduling, aircraft maintenance information, aircraft load weight and balance, and flight passenger concerns.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Cline                      US 4,642,775                      Feb. 10, 1987

The following rejections<sup>2</sup> by the Examiner are before us for review:

1. Claims 68-73 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.
2. Claims 68-73 are rejected under 35 U.S.C. § 102(b) (2002) as being anticipated by Cline.

ISSUES

The issues before us are whether the Appellant has shown that the Examiner erred in rejecting claims 68-73 as being directed to non-statutory subject matter, and over Cline. These issues turn on whether: (1) claim 68 defines statutory subject matter; and (2) Cline discloses all of the elements as called for in claim 68.

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

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<sup>2</sup> The rejection of claims 68-73 under 35 U.S.C. § 1112, second paragraph, as set forth in the Final Rejection mailed April 19, 2007 (Final Rejection 3) has been withdrawn (Ans. 6).

1. Cline discloses a flight planning system for obtaining flight plans and/or weather information that comprises a portable computer 40 having a display 42, a keyboard 44, a modem 51 and a disk drive 52; a flight management computer 14 and a data management unit 20 located on an aircraft; an on ground data center 30; and a radio system 36 connected to the data center for communicating with the aircraft.
2. Cline further discloses that the pilot, via the keyboard 44, inputs data into the computer 40 (col. 6, l. 52-col. 7, l. 10); thereafter the data center 30 computes three flight plans (col. 7, ll. 36-41); and then the pilot selects a desired flight plan (col. 7, ll. 42-58) and reviews factors related to the desired flight plan (col. 8, ll. 1-13) (fig. 1).
3. Cline's inputted pilot data can include eighteen (18) pieces of data related to, *inter alia*, the basic flight plan, weather, aircraft and fuel (col. 6, l. 56-col. 7, l. 10; and Abstract).
4. Cline's data center 30 can transmit weather data to the computer 40 (col. 7, ll. 59-60).
5. Cline's radio system 36 provides for in flight communication with the on ground data center 30 for in flight updates to the flight plan and/or the weather (col. 8, ll. 51-58).

## PRINCIPLES OF LAW

“[E]ach invention must be evaluated as claimed; yet semantogenic considerations preclude a determination based solely on words appearing in the claims. In the final analysis under § 101, the claimed invention, as a

1 whole, must be evaluated for what it is.” *In re Sakar*, 588 F.2d 1330, 1333  
2 (CCPA 1978).

3 Anticipation is established only when a single prior art reference  
4 discloses, expressly or under the principles of inherency, each and every  
5 element of a claimed invention. *RCA Corp. v. Applied Digital Data Sys.,*  
6 *Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984). In other words, there must be no  
7 difference between the claimed invention and the reference disclosure, as  
8 viewed by a person of ordinary skill in the field of the invention. *Scripps*  
9 *Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir.  
10 1991). It is not necessary that the reference teach what the subject  
11 application teaches, but only that the claim read on something disclosed in  
12 the reference, i.e., that all of the limitations in the claim be found in or fully  
13 met by the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772  
14 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

15 When construing claim terminology in the United States Patent and  
16 Trademark Office, claims are to be given their broadest reasonable  
17 interpretation consistent with the Specification, reading claim language in  
18 light of the Specification as it would be interpreted by one of ordinary skill  
19 in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir.  
20 2004).

21 Where printed matter is not functionally related to the substrate, the  
22 printed matter will not distinguish the invention from the prior art in terms of  
23 patentability.” *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004).

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ANALYSIS

Appellant argues claims 68-73 as a group. As such, we select claim 68 as representative of the group, and claims 69-73 will stand or fall with claim 68. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

*Rejection of claims 68-73 under 35 U.S.C. 101.*

The Examiner contends (Ans. 4) that claim 68 defines an operating program embodying functional descriptive material and that since the claim does not define a computer-readable medium or memory, it is non-statutory. We find that since the laptop stores the programmed material, the programmed material is on a computer readable medium. The Examiner presumes that claim 68 is drawn to an operating program; however, we find that claim 68 is drawn to a method. In particular, we find that claim 68 is drawn to method of providing a laptop (ll. 4-5), programming the laptop with linear and non-linear programs, and operating programs (hereinafter “programmed material”) (ll. 6-11); and loading data (ll. 12-15) on to the laptop. In the final analysis under § 101, the claimed invention, as a whole, must be evaluated for what it is.” See *Sakar* at 1333. We do not agree with the Examiner’s analysis (Ans. 4 and 6) regarding claim 68 being directed to non-statutory subject matter as we find that the Examiner misconstrued claim 68 as being drawn to an operating program and, therefore, did not address all of the method steps called for in claim 68. We agree with Appellant (Br. 4-5) and find that when all of the method steps called for in claim 68 are addressed, the claim is found to be drawn toward statutory subject matter. We conclude that the Examiner erred in rejecting claims 68-

73 as being directed to non-statutory subject matter. We reverse the rejection of claims 68-73 under 35 U.S.C. § 101.

*Rejection of claims 68-73 under 35 U.S.C. § 102(b) as being anticipated by Cline.*

Appellant contends (Br. 7-8) that Cline does not disclose inputting all of the data called for in claim 68. Claim 68 is a method claim that includes inputting six items of data (ll. 12-15). The six pieces of data define six data collections. While claim 68 characterizes the data as aircraft and flight related data pertaining to a flight plan, weather information, aircraft crew scheduling, aircraft maintenance information, aircraft load weight and balance, and flight passenger concerns, these characterizations do not define any functional or structural relationship between the data and the programmed laptop. Accordingly, these characterizations do not patentably distinguish the claimed data inputs from the data inputs of Cline. *See Ngai*, 367 F.3d at 1339. *Compare In re Lowry*, 32 F.3d 1579, 1583-84 (Fed. Cir. 1994) (claimed data structures that dictate how application programs manage information define functional characteristics of the memory and are not analogous to printed matter). Cline discloses inputting up to 18 pieces of data (Fact 3). Giving claim 68 its broadest reasonable interpretation, we agree with the Examiner's analysis (Ans. 5-8) and conclude that the inputting of Cline's 18 pieces of data satisfies the data loading step called for in claim 68. We affirm the rejection of claims 68-73 under 35 U.S.C. § 102.

#### CONCLUSION OF LAW

We conclude that the Appellant has shown that the Examiner erred in rejecting claims 68-73 under 35 U.S.C. § 101 as being directed to non-



1 statutory subject matter. We conclude that the Appellant has not shown that  
2 the Examiner erred in rejecting claims 68-73 under 35 U.S.C. § 102(b) as  
3 being anticipated by Cline.

4  
5 **DECISION**

6 The decision of the Examiner to reject claims 68-73 as being directed  
7 to non-statutory subject matter is reversed. The decision of the Examiner to  
8 reject claims 68-73 over Cline is affirmed.

9 No time period for taking any subsequent action in connection with  
10 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

11  
12 **AFFIRMED**

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